IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH OCTOBER 2006 / 13TH ASWINA 1928

MFA.No. 1228 of 1999()

WCC.78/1992 OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION,KOLLAM

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APPELLANT/FIRST OPPOSITE PARTY:

KERALA STATE FILM DEVELOPMENT CORPORATION,
REPRESENTED BY THE MANAGING DIRECTOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENT/APPLICANT:

SMT. THANKAMMA K.B.,
KAITHAVALIPURATH,
VAYALAR PANCHAYAT W.A.,
PATTNAKKADU P.O.,
CHERTHALA & HER SONS AGED 8 & 7.

BY ADV. SRI.CHERIYAN KURUVILLA

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 05/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A.No.1228 OF 1999

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Dated this the 5th day of October, 2006.

JUDGMENT

Heard.

2. This appeal is by the Kerala State Film Development Corporation, a public sector undertaking. It challenges the decision of the Commissioner for Workmen's Compensation passed on an application for compensation by the respondents alleging that their predecessor-in-interest was employed with the appellant Corporation as a Gate-keeper and that he suffered injuries leading to his death, owing to a fall from a coconut tree standing near the gate of a theatre belonging to the appellant which he climbed to pluck tender coconuts on the instructions of the Manager of the theatre, to be offered in connection with certain festivals in a temple. It was a specific case of the appellant before the Commissioner that the deceased was never employed by the appellant during the relevant

time and that it is a case where a cooked up story was foisted against the appellant to secure an order for compensation. It was also urged that the Gate-keeper and other watchmen, who were working under a contractor, had done such a mischief and that no instructions were issued by the Manager of the theatre to the deceased to pluck tender coconuts.

2. The materials on record do not disclose any real appreciation as to the question whether the deceased was in the employment of the appellant. I say so because, the impugned order itself would show that muster roll and attendance register were produced by the opposite parties, however that such materials were not considered in the proper perspective while deciding the case. In my view, the Commissioner has acted contrary to law in the matter of appreciating the evidence on record and therefore, the impugned order is vitiated on a substantial question of law.

In the result, the impugned order is set aside and the case is remitted for reconsideration after giving

parties further opportunities of hearing. Send the lower court records forthwith.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A.No.1228 OF 1999

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JUDGMENT

Dated: 5th October, 2006.